

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION

MOLLY KIRKPATRICK, on behalf
of Herself and All Others Similarly
Situated,

Plaintiffs,

vs.

CARDINAL INNOVATIONS
HEALTHCARE SOLUTIONS,

Defendant.

Civil Action No. 1:16-CV-01088-TDS-
LPA

**DEFENDANT'S MOTION TO POSTPONE CONSIDERATION OF PLAINTIFF'S
MOTION FOR CONDITIONAL COLLECTIVE ACTION CERTIFICATION
PENDING LIMITED DISCOVERY**

Cardinal Innovations Healthcare Solutions ("Cardinal"), through undersigned counsel and pursuant to Local Rule 7.3, respectfully requests that the Court enter an Order:

- Permitting limited discovery for a period of sixty days;
- Resetting Cardinal's response deadline to Plaintiff's Motion for FLSA Conditional Collective Action Certification [ECF No. 26] for thirty days after the conclusion of the limited discovery; and
- Postponing its consideration of the conditional certification issue until the completion of limited discovery and additional briefing.

Cardinal files its memorandum of law in support of its motion as **Exhibit A**.¹

ARGUMENT

Plaintiff brought this putative collective action pursuant to 29 U.S.C. § 216(b), claiming that Cardinal misclassified its I/DD Care Coordinators as exempt under the Fair Labor Standards Act (“FLSA”). Plaintiff filed her motion seeking conditional certification of a collective action;² however, the parties have not yet engaged in discovery. As is further explained in Cardinal’s brief, it would be beneficial to the Court’s determination for the parties to engage in limited discovery prior to the consideration of Plaintiff’s Motion. The narrow question to be answered during this discovery is whether there exists a group of similarly situated employees who have been subjected to a policy or procedure that violates the law. *See Adams v. Citicorp Credit Servs.*, 93 F. Supp. 3d 441, 453 (M.D.N.C. 2015) (“plaintiffs generally need only make a relatively modest factual showing that [] a common policy, scheme, or plan [that violated the law] exists.” (alterations in original)).

As has been done by other federal courts within North Carolina and the Fourth Circuit, Cardinal intends to conduct pre-certification depositions of Plaintiff and the seven Opt-In Plaintiffs, as well as other employees and managers whose testimony will be highly relevant to the issue of whether this case is suitable for conditional certification. Discovery

¹ Prior to filing its motion, Cardinal conferred with Plaintiff’s counsel and offered to stipulate to the tolling the statute of limitations during the ninety-day discovery and briefing period. Plaintiff’s counsel does not consent to this Motion.

² Because the deadline to respond to the motion is January 26, 2017, Cardinal is also filing an Expedited Motion to Stay that deadline until the Court can consider the present motion.

on other issues—such as damages or other affirmative defenses—would be postponed until after the Court determines whether this case should be certified as a collective action.

Limited discovery prior to consideration of Plaintiff's Motion for conditional certification would not only conserve judicial resources but also save the parties the expense that they would unnecessarily incur should the Court later determine that conditional certification is not warranted. It would also avoid disrupting Cardinal's business and needlessly undermining employee morale. At a minimum, pre-certification discovery "would better serve the court and public interest in the speedy resolution of this matter." *Carver v. Velocity Express Corp.*, No. 1:07CV407, 2008 WL 1766629, at *1 (W.D.N.C. Apr. 14, 2008).

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: s/Debbie Whittle Durban

Debbie Whittle Durban. NC Bar No. 39115
E-Mail: debbie.durban@nelsonmullins.com
Bank of America Corporate Center, 42nd Floor
100 North Tryon Street
Charlotte, NC 28202
Telephone: 803.255.9465 / Fax: 803.255.9069

Mark Stafford, NC Bar No. 16835
E-mail: mark.stafford@nelsonmullins.com
Candace S. Friel, NC Bar No. 36763
E-mail: candace.friel@nelsonmullins.com
380 Knollwood Street, Suite 530
Winston-Salem, NC 27103
Telephone: 336.774-3331 / Fax: 336.774.3379

Attorneys for Cardinal Innovations Healthcare Solutions

Columbia, South Carolina
January 11, 2017

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON SALEM DIVISION

MOLLY KIRKPATRICK, on behalf
of Herself and All Others Similarly
Situated,

Plaintiffs,

vs.

CARDINAL INNOVATIONS
HEALTHCARE SOLUTIONS,

Defendant.

Civil Action No. 1:16-CV-01088-
TDS-LPA

CERTIFICATE OF SERVICE

I hereby certify that on January 11, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

CHRISTOPHER R. STRIANESE chris@strilaw.com

TAMARA L. HUCKERT tamara@strilaw.com

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: /s/ Debbie Whittle Durban

Debbie Whittle Durban

NC Bar No. 39115

E-Mail: debbie.durban@nelsonmullins.com

Bank of America Corporate Center, 42nd Floor

100 North Tryon Street

Charlotte, NC 29202-4007

Telephone: (803) 255-9465

Attorneys for Defendant Cardinal Innovations

January 11, 2017